

CLARKE COUNTY
Planning Commission
Minutes
2010 April 2 – 9:00 a.m.

A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Town/County Joint Government Center, Berryville, Virginia, on Friday, April 2.

Commissioner Ohrstrom called the meeting to order at 9:05 a.m.

ATTENDANCE

George Ohrstrom, II, Chair; Jay Arnold, Barbara Batterton, Anne Caldwell, A.R. Dunning, Jr., Beverly McKay, Cliff Nelson, Kathy Smart, Richard Thuss, and Bob Wade.

ABSENT

Chip Steinmetz

STAFF

Charles Johnston, AICP, Planning Director; Jesse Russell, Zoning Administrator; and Debbie Bean, Recording Secretary.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda.

Yes: Arnold, Batterton, Caldwell, Dunning (moved), Nelson, Ohrstrom, Smart (seconded), Thuss, and Wade

No: No one

Absent: McKay and Steinmetz

APPROVAL OF MINUTES

The Commission voted unanimously to approve the briefing meeting minutes of 2010 March 2.

Yes: Arnold, Batterton (seconded), Nelson, Ohrstrom, Smart, Thuss (moved), and Wade

No: No one

Abstained: Caldwell and Dunning

Absent: McKay and Steinmetz

The Commission voted unanimously to approve the regular meeting minutes of 2010 March 5.

Yes: Arnold, Batterton, Nelson (moved), Ohrstrom, Smart, Thuss, and Wade (seconded)

No: No one

Abstained: Caldwell and Dunning

Absent: McKay and Steinmetz

Chair Ohrstrom explained the rules for a public hearing.

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 9-B, Definitions, so as to modify the definitions of the terms ‘Kennel’, ‘Commercial Boarding Kennel’, and Commercial Breeding Kennel’, so as to replace the references to dogs, cats, or canine/feline animals with the term ‘companion animals’, to combine the terms ‘Commercial Boarding Kennel’, and Commercial Breeding Kennel’, and to state that such use has or is determined to need a Business License and has five or more adult companion animals;
Section 3-C-2-l, Supplementary Regulation for Home Occupations, so as to include commercial boarding or breeding kennels as home occupations, only in the AOC and FOC Zoning Districts, when such use has or is determined to need a Business License and has fewer than five adult companion animals; and

Section 3-C-2-gg, Supplementary Regulation for Commercial Boarding Kennels, Commercial Breeding Kennels, Animal Shelters so as to shift use and setback regulations for such uses from the definition section of the Zoning Ordinance to this section.

TA-09-14

Mr. McKay entered the meeting.

Mr. Johnston explained this request. He stated that after a public hearing on January 8th, the Commission discussed the proposal and determined that the amendment should be re-advertised so as to allow a Commercial Boarding or Breeding Kennel as a Home Occupation only in the AOC and FOC Zoning Districts, in addition to the stipulation that such facility would house less than five companion animals older than six months. He said the re-advertised amendment is before the Commission. He said that since the public notice was advertised, there have been significant negative public comments regarding this amendment. After discussion with staff and the Commission, Chair Ohrstrom asked for public comments.

Connie Fisher, resident in the area, stated that she has been a breeder of longhaired dachshunds for over 30 years. She said she understands the support to keep puppy mills out. She said she feels this proposal should be tabled in order to further study this amendment.

Mary Lamphier, resident in the area, stated she has been a dog breeder for about 30 years. She stated that she lives in the country on 17 acres and owns five dogs. She said if she was living in the suburbs she can see how this would be an issue. She said five dogs is really a restrictive number and she feels that her dogs are not a problem and that she has never received a complaint.

Sharon Howse, president of Shawnee Kennel Club and a resident in the area, presented a letter to the Commission. She gave a brief discussion regarding the proposed text amendment. She said that the Shawnee Kennel Club puts on two shows at the Clarke County Ruritan Fairgrounds each year. She stated that the shows bring in from 900 to 1000 dogs each day, and the owners and handlers of these dogs bring in revenue to the community. She stated that if any or all of these proposed zoning amendments are approved, that the Shawnee Kennel Club would move their shows out of Clarke County. She said that other clubs might also decide to pull their shows out of Clarke County. She said that the proposed regulations would end up costing the County and the businesses in the area revenue.

Michael and Karen Wilson, 123 Ross Lane, Bluemont, Virginia, were present and stated that over the years they have bred approximately eight litters of puppies. Mr. Wilson stated that their concerns are with the number of dogs and the restrictions that are being proposed.

Susan Markley, resident in area since 1998, said she has been showing dogs since 1991. She stated that she currently has eighteen dogs on three acres of land. She said she understands the concerns with barking dogs but that the noise from the farms surrounding her property is much noisier than her dogs. She said that she has had a kennel license since she moved into the County. She stated that her kennel is located behind her house that adjoins a three hundred acre field.

Jerry Howse, resident in area stated that he and his wife Sharon moved to Clarke County in 1998. He said that they like the rural nature of the County and the fact that the laws in our books prohibit puppy mills. He said that his concerns regarding having five dogs could result in being required to have a business license. He also stated that if a person has five or more dogs a requirement of a 500-foot setback is extreme. He said this amendment should not be for hobby breeders. He said his last litter was 18 months ago, but he still got a business license. He said one year he might make money and another he may not.

Alice Harrington, with the Virginia Federation of Dog Clubs and Breeders and resident of Arlington, Virginia presented a letter to the Commission. She gave a brief discussion regarding the proposed amendment. She said she met with Jesse Russell and discussed this proposed amendment. She stated that the Commission is fortunate to have many responsible dog owners, breeders and kennel clubs in the County. She encouraged the Commission to draw upon their expertise in writing ordinances relating to dogs. She said she thinks having a committee appointed to discuss these items with staff would be a wonderful idea.

George Mulley, president of the Middleburg Kennel Club and his wife Eileen were present and stated that most of the issues they were concerned with have been addressed. He said he feels the number of dogs should be defined.

Joe Henderson, resident in the area, stated that he felt very encouraged by the number of people here that love dogs. He said he feels that we need to have a committee to research this amendment.

Dennis Foster, resident in the area, Director of the Master Fox Hounds of the United States and Canada was present and stated that he deals with this issue all over the United States and all over the world. He stated that the two issues he has are with the numbers and the language. He said if you keep a clean kennel and the animals are healthy it is not a puppy mill. He stated that when you try to change the definition of a pet to a companion animal the owners now become the guardians. He stated that in changing the definition you open yourself up for litigation. He said that I could sue you because I do not think you are handling your dog correctly. He said he feels we are making a huge mistake by the proposed language change.

Mr. Johnston stated that the definition of the term 'companion animal' dog is from the Code of Virginia.

Commissioner Dunning stated we need to avoid the term 'companion animal' and he feels that common sense should lead us.

Todd Curren, resident in the area, stated we should not care what other counties are doing. He said not to burden people with regulations and licensing. He said he has a concern with the setbacks. He asked the people in the audience to raise their hands if they are against this proposed text amendment and approximately 99% of the people in the audience raised their hands.

There being no further public comments, Chair Ohrstrom called for a motion.

The Commission voted unanimously to table this amendment and to establish a committee to study this amendment.

Yes: Arnold, Batterton, Caldwell (moved), Dunning, McKay, Nelson, Ohrstrom, Smart (seconded), Thuss, and Wade

No: No one

Absent: Steinmetz

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 3-A-1-a, Permitted Uses and Structures in the AOC Zoning Districts, so as to add the use: “Farmers Markets, Seasonal”;

Section 3-A-2-a, Permitted Uses and Structures in the FOC Zoning Districts, so as to add the use: “Farmers Markets, Seasonal”; and

Section 9-B-71, Definitions, so as to add the term: “Farmers Markets, Seasonal”. TA-09-08

Mr. Johnston explained this request. He stated that this request was re-advertised so as to include the Forestal-Open Space-Conservation Zoning District as this reference had been inadvertently omitted. Mr. Russell stated that this amendment was intended for the local producers. He said that this would be for the local producers to have a venue to sell their goods on days other than just on Saturday mornings. Mr. Russell said that this amendment was never intended to harm the Farmers Market in Berryville. After discussion with staff and the Commission, Chair Ohrstrom asked for public comments.

Alan Kitselman, Chair of the Berryville Area Development Authority, Town Council member, and Chair of the Community Improvements Committee, stated that our community is unique and we have a variety of assets going on in the area. He said that one of the assets is the agricultural community. He said that we are trying to find a way to for these assets to work together in an acceptable manner and one way to do this is the Clarke County Farmers Market held on Saturdays. He stated that he has received constituent input and the concern is that by opening this up to create other markets within the County could hurt the Clarke County Farmers Market held in Berryville on Saturdays. He stated that the Farmers Market helps all the businesses down town and he would hate to see us dilute the market force and kill the Farmers Market. He said lets talk to the people that attend the market and try to create a venue to make the Farmers Market work for everyone. He said this is something that really works in the community and he would like to see this tabled in order to discuss this further before making a decision.

Christy Dunkle, Berryville Town Planning Director, Assistant Town Manager and member of the Executive Council for the Farmers Market, stated that Berryville Main Street has been working to organize events along with the Farmers Market. She stated that the critical role of this Market can not be over expressed. She said there were several days when the Farmers Market was open and there was no parking available due to the amount of people that attended the Market. She said that it was wonderful to see the Town so full of people and she feels that expanding the hours of the Market is a great idea. She said it is critical to keep the Farmers Market the way it is not and not dilute the market. She suggested that a committee be selected and to invite vendors and farmers in the area to get their input for the Farmers Market.

Commissioner Thuss suggested that advertising on Route 7 in both directions would inform people about the Farmers Market which would bring in more people. Ms. Dunkle stated that they are currently

working on that idea. Commissioner Smart and Commissioner McKay said they think expanding the hours of the Farmers Market would be a great idea.

Mayor Wilson Kirby, suggested that this amendment be tabled in order to allow time to work out the details of this proposed amendment. He said the Farmers Market is very successful and he has concerns about disturbing the way things are going now.

Mike Burner, county farmer, stated that he and Mr. Russell have been discussing this amendment and he said the main problem with extending the hours is finding the staff to work the extended hours. He said he does not have enough staff to work the Farmers Market and to get his work done on the farm. He stated that he is producing about 40 different vegetables, which he sells at the Farmers Market. He said if there was a co-operative it would work out better so each farmer could take a turn. He stated that he would like more exposure and after talking with other farmers, a lot of them feel the same way. He said he wants the Farmers Market to stay as it is and to grow.

Commissioner Arnold stated that the Farmers Market has done a good job. He feels they need to increase the hours and that other farmers need to put in their thoughts on this matter.

There being no further public comments, Chair Ohrstrom called for a motion. Commissioner Thuss said that he thought the proposed use would not have negative impact on the Farmers Market in Berryville and these provisions needed to be in place for this year's growing season. He said if the Board of Supervisors wanted to add language limiting the items sold to those from Clarke and adjoining counties, it could do so.

The Commission voted to recommend approval of the above text amendment to the Board of Supervisors.

Yes: Batterton, Caldwell, Dunning, McKay, Thuss (moved), and Wade (seconded)

No: Arnold, Nelson, Ohrstrom, and Smart

Absent: Steinmetz

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance so as to delete the following sections:

Section 3-A-1, Schedule of District Regulations of the AOC Zoning District, Special Use: “Minor Commercial Public Assemblies”;

Section 3-A-2, Schedule of District Regulations of the FOC Zoning District, Special Use: “Minor Commercial Public Assemblies”;

Section 3-C-2, Supplementary Regulations for “Public Assemblies”; and

Section 9-B, Definitions, of the term: “Minor Commercial Public Assemblies”. TA-10-01

Mr. Johnston explained this request. He said that this amendment use was approved on 2009 January 20 to include the above referenced uses, regulation and definition. He said the Board had just completed work on a rewrite to the County Code for Special Events, which was described as an outdoor public assembly. He said the Board has also approved amendments to the Zoning Ordinance to all Farm Wineries as permitted uses, as required by the Code of Virginia. He said that Mr. Mitchell is of the opinion that if farm wineries are allowed to have supplementary events, it is inconsistent to not to allow other businesses to do the same. He said that it now would be unfair to allow wineries more latitude with such activities than other businesses, so he recommends that these sections of the Zoning Ordinance be deleted. After discussion with staff and the Commission, Chair Ohrstrom asked for public comments.

Jim Bogaty, owner of Veramar Farm Winery, stated that he supports the deleting of this wording. He said we have an economic situation in the Country and that he and other Clarke County businesses are struggling. He said he is for no regulations in farm industry. He stated that the wine industry plays a big role in the community and that tourism is a central component in the wine industry. He said he is for deleting this wording.

Kirk Harvey, of Bluemont, read prepared comments. He said there are many tourists that come to Virginia to taste our wine. He said we are discouraging wineries from coming to our area.

There being no further public comments. Chair Ohrstrom called for a motion. Mr. Wade said that he felt the current regulations insured that there would not be events that would have negative impact on adjoining property owners.

The Commission voted to table this amendment.

Yes: Arnold, Batterton, Dunning (seconded), McKay, Nelson, Ohrstrom, Smart, Thuss, and Wade (moved)

No: Caldwell

Absent: Steinmetz

TEXT AMENDMENT – SET PUBLIC HEARING

CornerStone Power Development LLC (Nicholas Bullinger, agent) requests approval of the following amendments to the County Zoning Ordinance:

Section 3-A-1-a-3, Special Uses in the Agricultural-Open Space-Conservation (AOC) Zoning District, so as to add “Large Photovoltaic Solar Power Plant” as a Special Use;

Section 3-C-2, Supplementary Regulations for Uses in Various Districts, so as to add regulations for “Large Photovoltaic Solar Power Plant”;

Section 9-B, Definitions, so as to add a definition of the use: “Large Photovoltaic Solar Power Plant”. TA-10-02

Mr. Johnston explained this request. He stated that the applicant is requesting approval of the above referenced amendments so as to allow Large Photovoltaic Solar Power Plants. He stated that this proposal would allow solar powers plants in the AOC Zoning District. He said that Nick Bullinger, agent for CornerStone Power Development LLC was present to answer questions from the Commission. Mr. Bullinger identified the site and said that the property owner, Monte Gibson, is present.

The Commission asked Mr. Bullinger several questions regarding this request. He said that Mr. Gibson’s property is a good area for this. He gave a brief discussion regarding the procedure for this request. He said the reason that solar power is viable for this part of the world is the efficiency and the cost has fallen tremendously.

Mr. Gibson said within the last year the power plant has been upgraded 100%. He said if this solar power plant is established it might be possible to service the entire County.

Commissioner McKay left the meeting.

After discussion with and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this request for the next meeting of the Planning Commission on 2010 May 7.

Yes: Arnold, Batterton, Caldwell (moved), Dunning (seconded), Nelson, Ohrstrom, Smart, Thuss, and Wade

No: No one

Absent: McKay and Steinmetz

TEXT AMENDMENT – SET PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Subdivision Ordinance:

Section 7-C-3-(I), Certifications to be shown on Record Plats, so as to specify that the certificate of approval by the Planning Commission is signed by the Chair of the Commission and to add a certificate of approval to be signed by a member of the Planning Commission who visited the property being subdivided before Commission approval of the subdivision.

TA-10-03

Mr. Johnston explained this request. He stated that at the March meeting, it was determined that members of the Planning Commission had not visited a property that was on the Commission's March agenda for subdivision approval. He said it has been the unwritten policy of the Commission to have one or more Commissioners visit a subject property before Commission action. He stated that the above amendment would formalize this policy and have a member of the Commission sign a certificate of approval who has seen a property proposed for subdivision. Chair Ohrstrom asked the Commission for their comments.

Commissioner Smart suggested to table this request, as she does not think it is necessary. Commissioner Wade agrees with Commissioner Smart to table this amendment, as he believes this can be done administratively.

Commissioner Dunning said if we do a text amendment to require that a member of the Planning Commission sign off on a certificate of approval it would prevent us from failing to make site visits for subdivisions.

After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted to table this amendment.

Yes: Arnold, Batterton, Caldwell, Nelson, Ohrstrom, Smart (moved), Thuss, and Wade (seconded)

No: Dunning

Absent: McKay and Steinmetz

Board/Committee Reports

Board of Supervisors

– **Pete Dunning**

Commissioner Dunning stated that the Board approved the text amendment regarding special uses in the AOC and FOC zoning districts and the supplemental regulations for uses in various districts. He stated that the text amendment for outdoor lighting standards for site development plans was approved. He said that the text amendment for the Berryville Area Plan Amendment was continued until next month and the renewal of the AOC/FOC Districts was approved.

Sanitary Authority

– **Pete Dunning**

Commissioner Dunning said he is concerned with the economy but that the Sanitary Authority is moving ahead with the new water tower in Millwood.

Board of Septic & Well Appeals
Nothing to report

– **Pete Dunning**

Board of Zoning Appeals
Nothing to report

– **Anne Caldwell**

Historic Preservation Commission

– **Cliff Nelson**

Commissioner Nelson stated that the Historic Preservation Commission had its last meeting on March 23rd. He stated that the Northern Shenandoah Valley Branch of Preservation Virginia would be having a meeting at Springsbury on May 2nd and there would a tour of the structures. He stated that the next meeting is scheduled for 2010 June 1 at the Battletown Inn at 11:00 a.m., in advance of the Annual Preservation Awards luncheon.

Conservation Easement Authority

– **George Ohrstrom, II**

Chair Ohrstrom stated that several people have backed out of their proposed easement agreements and the Authority is looking forward to new ones to replace them.

Agriculture Land Plan update

– **Bev McKay**

Mr. Russell stated that the Renewal of the Clarke County Agriculture District was approved at the Board of Supervisors meeting on 2010 March 16.

Staff Reports

Natural Resource Activities

– **Alison Teetor**

Nothing to report.

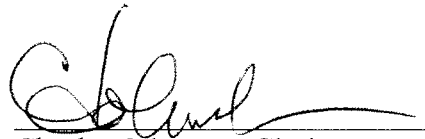
Enforcement Officer

– **Nancy Olin**

Ms. Olin's progress reports for 2010 February 23 thru 2010 March 25 were reviewed

There being no further discussion to come before the Planning Commission, the meeting was adjourned at 12:00 p.m. until the next regular scheduled meeting on 2010 May 7.


George L. Ohrstrom, II, Chair


Charles Johnston, Clerk

Minutes prepared by Debra L. Bean, Recording Secretary